

The Present Status of Fair Trade Laws¹

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A JUST Government will not permit its people to be exploited." In these words the Honorable John E. Miller, United States Senator from Arkansas, coauthor of the Tydings-Miller Fair Trade Enabling Act, expressed the philosophy of the so-called "Fair Trade" laws.² In support of this philosophy, "Fair Traders" say these laws are needed to restrain the monopoly represented by mass distributors who secure goods cheaply from manufacturers because of their great purchasing power and are thus able to undersell smaller dealers. Then, too, according to the "Fair Traders," these monopoly interests exploit consumers with "loss-leaders" as bait to get them into their stores where they are exposed to sales pressure on more profitable goods.

Oddly enough, the "Anti-Fair Traders" use the same quoted words to prove the opposite theory. They say that Fair Trade laws are bad because monopoly is actually promoted by allowing large manufacturers to curb competitive selling of well-known staple articles of great demand. This gives them control over the retailer and consumer on products which are necessary goods in commerce. In other words, opponents of Fair Trade laws say, in effect, that legalized monopoly prices, possible under such laws, raise the cost of living.

What are Fair Trade Laws?

Fair Trade laws, or minimum price maintenance laws, are now operative in 43 States. The term "Fair Trade" leads to confusion with other laws having similar names, but the initial State law of this sort, passed in California in 1931 and amended in 1933, was called a "Fair Trade" law. Legislation in all of the other 42 States was modeled very closely after the California law, even to taking its name.

The Fair Trade laws now existing in 43 States are supported by a Federal enabling measure called the "Tydings-Miller Act," approved on August 17, 1937. During the past few months, however, a repeal measure has been introduced in at least one State; and in the United States Senate and House of Representatives bills have been introduced for the repeal of the Tydings-Miller Enabling Act. Since Fair Trade Acts operate on a voluntary basis at the discretion of manufacturers or producers, and since the manufacturers are likely to take advantage of their provisions only so long as they can profit thereby—and they will not profit by such laws if consumers resist—there may be little actual need of repeal legislation.

¹ For a recent analysis of the legal aspects of fair trade laws see *Trends in Resale Price Maintenance* by James L. Brown, Division of Commercial Laws, in the February 1938 issue of *Comparative Law Series* published by the Bureau of Foreign and Domestic Commerce.

² From an address before the American Fair Trade League, New York City, Apr. 4, 1938.

It is difficult to consider this far-reaching problem without some preconceived opinions. It is the aim of this article, however, to state most of the conflicting issues, insofar as facts and known expressions of qualified individuals are available.

Provisions of Fair Trade Laws.

As State laws, Fair Trade laws apply only to commerce within the respective States. Moreover, they do not require that minimum prices be established, but merely permit certain contracts between the manufacturer and distributor for that purpose.

They apply to commodities (not services) which bear a trade-mark, brand, or name of the producer or distributor of the commodity; and which are in free and open competition with commodities of the same general class produced or distributed by others. Prior to the enactment of Fair Trade laws the courts had generally held attempts to control the resale price of an item illegal, once the title had passed from a seller to a buyer. The general provisions of Fair Trade laws are as follows:

1. They permit contracts containing price agreements between the owners of identified commodities and the wholesale and retail distributors in a State. State laws vary and in most cases provide for minimum resale prices, but in some cases the actual price may be specified.
2. They permit contracts that enable the buyer to require of any dealer to whom he may resell the commodity an agreement that he will not, in turn, resell it at less than the minimum price stipulated by the seller.
3. They permit the owner of the trade-marked merchandise to specify the prices at which different distributors, such as wholesalers and retailers, are to resell these articles.
4. They permit the owner of the trade-marked merchandise to hold distributors who have signed no contracts to the terms of other contracts in force in a State. If the nonsigning distributor "willfully or knowingly" advertises or sells any commodity subject to a State Fair Trade Act at a lower price than specified in a resale price agreement, such a price cut by a nonsigner is specified as "unfair competition" and, as such, brings him within the compass of the Act.
5. While Fair Trade Acts provide for vertical price agreements on a commodity from the manufacturer through the distributor to the consumer, they specifically prohibit price agreements horizontally between manufacturers, or between wholesalers, or between retailers.
6. In general the Fair Trade laws permit price cuts below the contract minimum (a) where a dealer's stock is being closed out with a purpose of discontinuing dealing in a commodity, it being required in some cases that the owner of such goods shall give to the producer or distributor from whom he bought prompt and reasonable notice in writing of his intention to close out said stock and an opportunity to repurchase it at the original invoice price; (b) where damaged, second-hand, or deteriorated goods are being disposed of and the fact is clearly made known to the public; and (c) where the goods are being disposed of by court order.

Although all of the State Fair Trade laws follow the same general pattern, there are many small differences

in the provisions. Under certain conditions these differences may become important to the contracting parties. In some cases the producer is defined as a "grower, baker, maker, manufacturer, or publisher." In others he is defined, in addition to the above, as "a bottler, packer, converter, or processor." In some States the commodity must be identified with the name of the producer or owner of the commodity, and in others with the name of the producer or distributor.

In some cases a "commodity" is not defined, but in most cases the term refers to "any subject of commerce." The identification of the commodity might be on the "label or content" of the commodity or on the "label or container" of the commodity. In some instances the commodity must be in "fair and open" competition with other commodities, but in others the phrase is "free and open." In some States it is specified that the owner of the trade-mark is the only person authorized to establish resale prices on the item in question, but this is not generally required by the laws.

For the purpose of preventing evasion of the intent of the acts, 30 States include prohibitions against—(a) the offering or giving of any article of value in connection with the sale of the commodity; (b) the offering or making of any concessions of any kind whatever (whether by the giving of coupons or otherwise) in connection with such sale; or (c) the sale or offering for sale of such commodities in combination with any other commodity.

State Coverage.

The initial results of the original California Act were rather discouraging, on account of price-cutting by dealers who were not parties to price contracts and who secured their goods from sources outside the State. Consequently, in 1933, the famous "nonsigner" clause was added to the California Act. This clause is referred to by some supporters of Fair Trade legislation as the "unfair-competition" clause. They reason that it is in reality an unfair competition clause rather than a nonsigner clause, because it does not hold a nonsigner to a Fair Trade contract, but provides that willfully or knowingly selling a commodity at less than the price stipulated in any contract under the Act "is unfair competition and is actionable at the suit of any persons damaged thereby." Nevertheless, in effect, nonsigners of price-maintenance contracts are liable to action to the same extent as signers.

It must be remembered that distributors have been fighting in one way or another for a quarter of a century for some kind of legislation that would prevent price-cutting. With the strengthening of the California Act in 1933, the Fair Traders, weary and disillusioned from their futile efforts to secure passage of a price-maintenance law by the Federal Congress, centered their attention on State instead of national legislation.

At that time, however, the N. R. A. came into the picture and interrupted what might have been an im-

mediate surge toward similar legislation in other States. The N. R. A. codes offered the Fair Traders price and trade practice controls never dreamed of by even the most optimistic supporters of price maintenance. It is quite natural that during the spectacular 2 years of the N. R. A. experiment no one was bothered about Federal or State price-maintenance legislation. But with the sudden end of the N. R. A. the Fair Traders again looked toward the West where their attention had been focused when interrupted by the N. R. A.

In 1935, 9 States passed price-maintenance laws called "Fair Trade Acts" after their original prototype, the California Fair Trade Act. In 1936, 5 more States passed such acts, making the total 15 by the end of that year. However, there was some doubt as to the constitutionality of these laws. On December 7, 1936, the Supreme Court of the United States supplied the Fair Trade movement with a timely and effective stimulant in the form of a unanimous favorable decision in the California and Illinois Fair Trade cases.³

The Supreme Court decision in December 1936, however, upheld the State price-maintenance laws on all points being tested, even including the so-called "non-signers" clause. The effect of this decision became apparent immediately. Inside of 3 months, 18 more States passed fair-trade acts, and 8 others were added in the second quarter of 1937. In August 1937, New Hampshire enacted a law, making a total of 27 State laws passed in that year. On April 7, 1938, Mississippi enacted a similar law, raising the grand total to 43 States. The only States today not having Fair Trade laws are: Alabama, Delaware, Missouri, Texas, and Vermont. Attempts have been made, however, to pass such laws in each of these States. The District of Columbia has no law, but one was introduced in the House of Representatives on March 15, 1938. In 1937, the banner year for price-maintenance laws, Puerto Rico and Hawaii also passed laws of this nature.

The Enabling Act.

During this successful drive for State Fair Trade laws, the fair traders were constantly pushing for Federal legislation which would legalize interstate price contracts. Up to this point a manufacturer had to negotiate his contracts within each State separately. This restriction, quite naturally, discouraged manufacturers because of the expense and trouble of domesticating in the various States. After 42 State Fair Trade laws had

³ This decision reversed much of the existing antitrust philosophy regarding price control established in the famous cases of *Robbs-Merrill* (where the right to attach a contract or condition to goods was denied); *Dr. Miles Medical Co.* (where the right to enforce a contract in which prices were fixed was denied); *Colgate & Co.* (where the right of refusal to sell additional goods to distributors who had cut prices was upheld and was not classified as a restraint of trade under the Sherman Anti-Trust Act. In this case there was no definite contract and it was held that a manufacturer had a right to pick his customers); and the *Beechnut Packing Co.* (where this last privilege was more or less nullified in that defendant was held to be restraining trade in fixing prices, through publicizing the resale price, tracing the origin of goods sold at less than a specified price, maintaining lists of merchants and wholesalers who cut prices, and in refusing to sell to distributors who had cut prices. The methods for controlling prices were so direct that it was decided the plan violated the Anti-Trust Act.)

been enacted, Congress gave immediate and favorable consideration to national Fair-Trade Enabling legislation, and the Tydings-Miller Act was approved on August 17, 1937. This Act amended the Sherman Anti-Trust Act and the Federal Trade Commission Act to legalize in interstate commerce resale price-maintenance agreements for commodities sold in a State where such agreements are valid under State laws. The Enabling Act removed the last of the obstacles for the manufacturer who desired to issue Fair Trade contracts for stabilizing retail prices on his trade-marked goods.

Response of Manufacturers.

Ever since the passage of the Enabling Act there has been a conservative and slowly increasing number of manufacturers making price contracts with their distributors. But many prominent companies have hesitated to adopt the price contract. John W. Dargavel, secretary of the National Association of Retail Druggists and a leading exponent of Fair Trade laws, stated: "There are not more than 50 drug manufacturers who have gone fair trade in the entire 42 States but there are perhaps three or four times as many who are experimenting in some of the States, and some 2,500 are hanging over the back fence watching to see what results are gained by the more courageous among their fellows."⁴ The movement is pronounced among those manufacturers who supply drug stores, including the makers of proprietary remedies and toilet preparations.

Grocery manufacturers have consistently avoided participating in Fair Trade contracts. Although they have been troubled with destructive price-cutting in retail stores to the detriment of a large number of their retail distributors, they prefer to have price-cutting curbed by another type of law, the "Unfair Practice Act," now existing in several of the States. This type of law prevents the sale of goods below cost, plus a markup to cover operating overhead in the retail store. In this connection it must be remembered that the grocery manufacturer gets a very substantial volume of sales from mass buyers represented by regional and national chains and the voluntary and cooperative groups which have pooled their purchases to become mass buyers of the first rank.

The Forces and Arguments for Fair Trade.

The outstanding supporter and most potent force in the Fair Trade movement is the National Association of Retail Druggists. The Chain Drug Store Association is also included among the supporters. Some of the other commercial and industrial fields closely identified with the movement include electrical appliance and radio dealers, retail jewelers, retail tobacco dealers, drug and proprietary-medicine manufacturers, retail book sellers, retail automobile dealers, wholesale druggists, toilet-goods manufacturers, distillers and retail liquor dealers, some branches of the paint and varnish industry, manufacturers of insecticides and

fungicides, and wholesale confectioners. The retail grocers may be classed as sympathetic to the movement, but not aggressively for it. Although the burden of attack in the courts has been borne by manufacturers, it is clear that the movement has been strongly encouraged by the smaller distributors. The laws were upheld by the Supreme Court, however, primarily on the basis of a manufacturer's property rights represented by his label.

Typical arguments advanced by supporters of Fair Trade laws run as follows:

1. Smaller independent businessmen, especially the independent retail druggists and other so-called "small" retailers believe the protection of this law is necessary to keep them in price competition on well-known business-sustaining items with larger distributors.

2. Fair Trade laws for the independent retailer embody the idea of one price to all. The consumer feels secure in the price he pays, knowing that someone else cannot buy the same goods more cheaply at another store. This one-price-to-all idea automatically lowers sales resistance.

3. Fair Trade laws will eliminate so-called "loss-leader" selling on those items which the manufacturer wishes to protect. Loss-leader merchandising, it is true, has been found an effective policy in aggressive retailing. For the retailer with ample resources it is merely a promotional measure for getting customers into the store, but it keeps customers out of smaller stores. It has been claimed in some instances that the advertised item used as "bait" was not even available at the store or was available only in limited quantities. Most of the larger and better stores, however, cannot be charged with this practice.

4. Under Fair Trade contracts, a fair margin is planned on the price-controlled items. In this way, the manufacturer gets better cooperation from the small retailer who finds he is able to meet competition on well-known brands. Manufacturers must see to it that independent retailers survive, because they still do about 73 percent of the total retail business.⁵

5. Manufacturers who own a brand or label, and who have spent money in developing a demand for identified products, and have improved quality standards, have a right to protect their property (good-will represented by the label). This right is the essence of the recent Supreme Court decision in the Illinois and California Fair Trade cases.

6. Fair Trade laws affect only a small proportion of the goods bought by the consumer.

7. Manufacturers are not given a monopoly, because it is provided that there shall be no horizontal price

⁴ Census of Business, 1935. This does not mean however, that nearly three-fourths of the business is done by small retailers, because much of the volume is done by the larger independent stores who are not particularly concerned with Fair Trade laws, and, in many cases are opposed to them. Their operations permit them to carry price-controlled items merely as a convenience to customers. Their efforts are directed toward the goods providing reasonable profit, and Fair Trade items will be pushed only if they provide a reasonable profit.

⁵ N. A. R. D. Journal, Apr. 7, 1938.

agreement between manufacturers, and, therefore, each manufacturer has to compete with others on the basis of price for similar goods.

8. Trade will tend to flow through normal retail channels and not be diverted through unnatural channels, as occurs when consumers are led out of their normal course to buy at out-of-the-way places because of cut prices which are not available in all stores.

9. Direct Government regulation must result, if the independent business man fails to suppress distributor monopoly (resulting from ability to cut prices), through the operation of Fair Trade legislation.

10. The promulgation and observance of the principles of Fair Trade are vitally important to the preservation of the profit system and of our form of government and our civilization.

11. There can be no general prosperity without a prosperous body of distributors; and distributors cannot be prosperous when they are beset by wasteful and unsound competition among themselves and by warfare which so weakens them that they cannot perform the services necessary to keep the factory wheels running.

12. With the elimination of the independent dealer, producers will have to rely upon a few large distributors. Thus, they will be compelled to accept low prices for their output and, receiving low prices, will have to pay low wages to workers.

Small distributors feel they have a just cause in their support of Fair Trade. A number of intelligent and responsible manufacturers join them. They believe the consumer will be benefited by such legislation. Their plea is for honesty and fair dealing throughout the system of distribution, and for the very existence of the small retailer and wholesaler, who, they sincerely feel, are dependent upon equal opportunity as expressed in the provisions of Fair Trade laws.

The Forces and Arguments Against Fair Trade.

The opposition to Fair Trade laws comes principally from large-scale distributors. These include some of the large department stores; some of the variety chains; a combination of labor and professional consumer groups; and some farmer representatives, although these latter do not necessarily express the majority opinion of the farmer on this question.

While the opposition comes from a relatively few persons, it has been strong and well publicized. It has undoubtedly caused many manufacturers to hesitate before entering into price-agreement contracts. The mail-order houses, whose tremendous volume has been built on the expressed appeal of lower prices to the consumer and "elimination of the middleman" are naturally joined in the opposition.

The following paragraphs include some of the arguments advanced by opponents of Fair Trade laws:

1. The larger distributors object to the manufacturer's interference with their retail price policies. They feel that this intrusion reduces their ability to

apply sound merchandising methods to their business. With minimum retail prices, there is no latitude for the retailer to meet given situations as they arise. He becomes a tool of the manufacturer.

2. The manufacturer of a nationally known item may hesitate to adopt Fair Trade contracts because of his fear that the standardized prices on his item may encourage the use of private brands as a result of distributor or consumer resistance.

3. Much of the small consumer goods is sold through different types of stores with different overhead costs. Some retailers require greater margins than others. Standardized margins, therefore, may not be sufficient for some retail outlets; while for others these margins would be excessive. Fixed retail prices subsidize the inefficient retailer at the expense of consumers.

4. There are too many stores, and the total cost of distribution and prices would be less if these small and more inefficient stores were allowed to close.

5. It is anomalous that the greatest drive for Fair Trade laws comes from small distributors in organized groups, when the legal basis for Fair Trade laws is the protection of property rights of the producer.

6. The manufacturer who commits himself to minimum retail prices opens up the field for exploitation of his competitor whose prices are not under Fair Trade contracts. "It has been the experience of the (food) producers that brands 'price fixed' under the laws repose on retail shelves while competitors' brands are 'price featured' and moved in volume."⁶

This argument might not apply, however, for industries in which price contracts are numerous, as in the case of drug-store items.

7. Those opposed to Fair Trade laws say these measures may lead eventually to government regulation of prices for the protection of the public because of the power of the producer to control prices.

8. The consumer is more concerned with low prices than with social and economic reasons for higher prices; consumers hesitate to pay a few cents more for any item. At least those consumers who are in the habit of patronizing cut-rate stores will have to pay higher prices on some of their favorite items.

9. It is expensive and troublesome for manufacturers to keep abreast of all of the legal aspects of different Fair Trade laws and with the current litigation in each State. This becomes especially irksome when the major portion of the manufacturers' distributive trade does not demand price contracts.

10. It takes more courage than that possessed by many manufacturers to turn down the large, profitable orders of mass distributors who wish to operate on a price-appeal basis.

11. The ever-present desire for increased sales volume and the effectiveness of the price motive in moving large

⁶ Paul S. Willis, president of the Associated Grocery Manufacturers of America, in *New York Times*, April 17, 1938.

quantities of goods argue against Fair Trade laws for many manufacturers.

12. Although proponents emphasize the "voluntary" nature of Fair Trade price contracts, there is nothing voluntary about the requirement that a nonsigner distributor must conform to contracts of others, whether or not they are generally acceptable to the trade.

Technical Difficulties.

Perhaps one of the greatest difficulties in the present legislation lies in the fact that no provision is made to regulate terms of sale. Since only the resale price may be regulated, and since no control is permitted to cover trade-in allowances, the legislation is of questionable value to many firms that otherwise would take advantage of the provisions. This weakness applies especially to the automobile, radio, and the electric-appliance industries.

Recently, in some areas, and particularly in some industries, there has been occasional widespread violation of price contracts. This partial failure under economic stress may signify a weakness under adverse conditions, and the question arises as to whether widespread violations invalidate contracts of signatory retailers. The New York Supreme Court recently denied an application for an injunction to prevent the sale of radios under list prices. The court held that the "complete collapse" of the radio retail price structure had absolved the defendants from any violation of the New York State Fair Trade Act.⁷

There may be difficulty in deciding when an item is in free and open competition. For example, the question has been raised as to how a book, whether it be a novel or a specialized work of a given author, can be in free and open competition with "commodities of the same general class produced or distributed by others."⁸

Manufacturers who have issued price-maintenance contracts, and who have needed increased sales volume, have offered to the trade special combination deals made up of two or more items, each with previously established minimum prices. The effect of these deals marked at a special low price to the consumer is to lower the minimum retail price on the items in question, at least for a stated period, below the point set in prior contracts. This action constitutes an admission of the practical shortcomings of price-maintenance philosophy.

The retailer who has built up his volume by cutting prices on some brands to develop store traffic, if restricted in this policy, may elect to center his price-cutting activities on bulk or unlabeled merchandise or on brands which do not come under price contracts. Such activities would nullify for the retailer the ad-

vantages gained through stabilized prices on the well-known branded items.

In some ways actual operation under Fair Trade legislation has been much more beneficial to the manufacturer than to the retailer.⁹ The laws, however, create two possible added costs for manufacturers: (1) Additional advertising to offset private-brand promotion by dealers, and (2) additional margins to dealers so that the brands will merit dealer promotion. Accordingly, the manufacturer has several alternatives. Either he may sacrifice his own profits to pay for one or both of these added costs, or he may do more effective advertising with less money, which might mean concentrating on fewer and more effective advertising mediums. This course would work adversely to the interests of many of the less important mediums.

Need for Facts.

Experience of manufacturers differs regarding the effect of Fair Trade laws on volume of sales; and the experience of the same manufacturer differs by regions of the country. Statements are made that Fair Trade laws increase prices and cost of living, and from other sources come statements that they decrease prices. With these extremely opposing views, the subject becomes a very appropriate one for factual research. Studies by the State Fair Trade committees operating under the leadership of the National Association of Retail Druggists, consistently demonstrate that prices show a decrease under Fair Trade laws. On the other hand, a large New York department store, in a survey of its own, reports that Fair Trade laws have resulted in an average increase of nearly 14 percent to the consumer on price-maintained brands in that store, and that the sale of private brands has been increased at the expense of the national brands whose prices had been increased. The magazine Sales Management sponsored a recent survey of the effect of Fair Trade acts on prices in the States of California, Washington, Iowa, Illinois, New Jersey, and Pennsylvania. This survey disclosed that most of the independent druggists have not raised prices on price-maintained goods, but that the chains have; neither chains nor independents have noticed much customer objection to the price raising that has taken place; and private brands have not been made much more attractive than in the past. In this survey the druggists seem to be fairly well satisfied with results, and if they could suggest any improvement it would be to make enforcement more sure and more prompt.¹⁰ In an earlier survey sponsored by the same magazine it was shown that a substantial majority

⁷ For example, a recent liquor price war in the East developed when a distiller canceled his Fair Trade contracts in a city because of a retailer boycott. The price war was responsible for clearing the retailers' shelves of excessive stocks of the distiller, and created the opportunity for the distiller to resupply the goods, the retailers bearing the cost of the sharp price reductions. The distiller, in this case, may have claimed good reasons for the temporary cancellation of his price contracts; nevertheless this experience demonstrates the advantage a manufacturer may have over a distributor in the operation of Fair Trade laws.

¹⁰ Sales Management, Mar. 1, 1938.

⁸ New York Herald Tribune, Apr. 13, 1938.

⁹ One apparently successful method has been devised to evade Fair Trade laws as they apply to books. Book clubs have been established by retailers, and special price reductions below contract prices have been given in the form of additional books to be selected from the retailer's stock.

of cut-rate druggists, regular druggists, department-store drug buyers, and manufacturers were personally satisfied with the Fair Trade laws that make price maintenance legal.¹¹

In preliminary reports of a Fair Trade survey made by the Drug Trade Credit Exchange, Inc., of Chicago, many druggists are said to have reported considerable increases in volume since the Fair Trade law became effective, and that little consumer resentment to Fair Trade was indicated. At the midwinter convention of the Federal Wholesale Druggists Association in New York, individual manufacturers reported lower retail prices on their products since Fair Trade. Studies by the California Pharmaceutical Association have likewise shown lower prices due to Fair Trade laws.¹²

A monthly illustrated magazine for consumer-buyers reported that, in accordance with a survey it had made, Fair Trade legislation has caused a rise in prices. Increases were reported of 8.5 percent in cosmetics, 12 percent in liquors, 15 percent in books, 16.5 percent in drugs, and 20 percent in miscellaneous items.¹³

In none of the surveys to date has there been any real attempt to determine the effect of these Fair Trade laws on a quantitative basis, as is evident from the markedly conflicting results that have been reported. Prices have been compared on selected items which have come under Fair Trade contracts. E. T. Grether, Associate Professor of Economics, University of California, demonstrates that it is reasonable to assume that, in the near future, under conditions that now exist, the full probability of coverage in the field of consumers' goods in this country lies between a low point of from 3 to 5 percent and a high point of from 12 to 15 percent of the total retail volume.¹⁴

Sound research into the effect of Fair Trade laws on prices is beset with real difficulties. It is one thing to determine a change in price, and quite another thing to isolate the cause of the change. An item whose price is established more closely in relation to the cost of labor and material in the item may be very sensitive to price changes in raw materials or variations in labor costs. The questions of scarcity of supply, overproduction, obsolescence of style or use, or perishability are all important influences on price change. Legislation governing minimum prices is but one of the elements that affect price. The question of time and place of sample checks may be decisive factors in price studies. For example, in two different cities in New Jersey during the early part of March 1938, the following prices are recorded for identical items in liquors: \$1.44 and \$2.03; \$2.30 and \$3.35; \$2.88 and \$4.05. These

are only a few of the items, but for seven different items, a total difference in price was noted amounting to a 40-percent increase in one town, as compared with another in the same State at the same time.¹⁵

Unless a real effort is made (1) to segregate that part of the consumer's dollar which is spent for retail goods, and (2) to determine what part of the retail sales volume is under price contracts, excluding the unidentified brands as well as the great amount of goods branded but not price-controlled, no reasonable answer can be given to the question "Have Fair Trade laws increased the cost of living?" Moreover, surveys on this question cannot be accepted as authentic until the surveyors are willing to look for the present unfavorable as well as favorable results as they may affect their own personal interests.¹⁶

Conclusion.

Fair Trade legislation has been achieved through the persistent efforts of a relatively few businessmen who have fought untiringly for this cause for a number of years. Many businessmen are either strongly for or strongly against the legislation. A great many accept Fair Trade laws without much concern one way or the other; and it is doubtful if the consumers are generally conscious of the influence or meaning of such legislation except in isolated instances.

Those who want Fair Trade laws have them and can secure certain benefits from them. In this classification come a large number of small independent distributors and a relatively few manufacturers.

There are, however, good economic and practical arguments against Fair Trade laws; but opponents of Fair Trade laws have several means of avoiding their restrictions—notably by promoting and expanding the sale of private brands and by the exploitation of commodities and services not coming within the jurisdiction of Fair Trade laws. The law means much to those manufacturers and distributors who want it and should mean relatively little to those who do not want it. The success of the movement and the expansion of its coverage into a larger number of industries is dependent upon the manufacturers' interpretation of consumer response to the legislation. When manufacturers cease to find it profitable, it will no longer function. At the present time price contracts cover a negligible part of the consumer's spendable income; and even with a marked expansion of industry coverage, it is not likely ever to cover a large share of consumer expenditures going into the cost of living.

¹¹ Printers' Ink, Feb. 17, 1938.

¹² The Federal Trade Commission has recently made a limited survey of the effects of State Fair Trade laws on the prices of 44 drug-store items, the inquiry having been made in 40 department stores in different parts of the country. No results have as yet been published. The Works Progress Administration on Apr. 8, 1938, announced a widespread and comprehensive survey of State Fair Trade laws and other laws dealing with marketing and with prices.

¹³ The National Consumer News, New York, N. Y., November 1937.

¹⁴ Sales Management, July 15, 1937.

¹⁵ Bayonne, New Jersey Times, Mar. 5, 1938.

¹⁶ A good example of this natural bias is demonstrated in a great many of the speeches and articles in favor of Fair Trade laws, where, in order to prove the economic evil of price cutting, Mr. Justice Sutherland is quoted as follows in the Supreme Court's decision in the California and Illinois Fair Trade cases: "There is a great body of fact and opinion tending to show that price-cutting by retail dealers is . . . injurious . . .". A fair treatment of this question should include the rest of the remarks of the Justice as follows: "True, there is evidence, opinion, and arguments to the contrary; but it does not concern us to determine where the weight lies . . .". the question may be regarded as fairly open to difference of opinion . . .".